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Supreme Court, U.S.
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No. 00-

IN THE

Supreme Court of the United States

SUSAN B. MEEK,

Petitioner,

v.

GEORGE M. BISHOP and
BISHOP, PETERSON AND SHARP, P.C.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE TWELFTH COURT OF APPEALS OF TEXAS

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

(1) Whether the Petitioner was denied due process and equal protection under the United States and Texas Constitutions when her appeal was dismissed by a court lacking jurisdiction for "failure to file a docketing statement" when a docketing statement was filed in the court of original jurisdiction thereby irregularly applying its own procedural rules and unjustifiably disparate standards in order to deny the Federal and State rights of the Petitioner?

(2) Whether the Texas Courts demonstrated fundamental unfairness and a pattern of denying the Petitioner due process and equal protection by not ensuring uniform treatment and fundamental fairness to each citizen under Fourteenth Amendment of the law in violation of the Texas and United States Constitutions?

(3) Whether Texas Courts denied Petitioner procedural and substantive due process by not allowing the case to be heard in the court of original and dominant jurisdiction when it is clearly mandated by state law? Instead, a court which lacked jurisdiction transferred the case to another court which also lacked jurisdiction thereby irregularly applying its own procedural rules and irregularly departing from the essential requirements of the law in order to deny the Petitioner's fundamental Constitutional rights.

(4) Whether Texas Courts denied Petitioner due process and equal protection when it applied the law in an arbitrary and capricious manner, creating disparate treatment to Petitioner so unfair and unreasonable in it's application that it violated the equal protection clause and ignored the very foundation of the legal system, that all persons be treated equally under the law?

(5) Whether the judgment is void because the visiting judge lacked authority to preside over the case, and whether any judgment rendered by the inserted visiting judge is void due to the judge's failure to recuse himself or to hold a hearing on the matter or have an oath of office on file as required by Texas law?

LIST OF PARTIES

Petitioner: Susan B. Meek

Respondents: George M. Bishop; Bishop, Peterson and Sharp, P.C.; and Cathy S. Lusk, Clerk of the Twelfth Court of Appeals of Texas

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Susan Meek ("Petitioner") respectfully prays that a Writ of Certiorari issue to review the decision of the Twelfth Court of Appeals of Texas which dismissed the Petitioner's appeal for failing to file a docketing statement (solely an administrative tool) when one was filed in the First Court of Appeals, the Court of proper jurisdiction. Secondly, due to the lack of jurisdiction of the Twelfth Court of Appeals, any judgment rendered should be declared void.

REPORTS OF OPINIONS

The Order of the Twelfth Court of Appeals of Texas dated January 31, 2000, denying Petitioners' motion for rehearing, is set forth in Appendix A.

The Opinion of the Twelfth Court of Appeals of Texas dated November 23, 1999 which dismissed the petitioner's appeal for failing to file a docketing statement when a docketing statement was filed in the First Court of Appeals the Court of original jurisdiction, is unreported, and is set forth in Appendix B.

The judgment of the 55th Judicial District Court of Harris County, Texas dated December 2, 1998, is set forth in Appendix C.

The Order of the Supreme Court of Texas, denying Petition for Review dated September 28, 2000 is set forth in Appendix D.

The Supreme Court of Texas denied Petitioner's Motion for Rehearing of the Denial of the Motion For Rehearing of Petition on November 2, 2000 as seen in Appendix E.

A copy of the courts record demonstrating the filed docketing statement is provided in Appendix F.

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under the Due Process and Equal Protection clauses of the First and Fourteenth Amendments to the Constitution, 28 U.S.C. § 1257(a).

STATUTES AND AUTHORITIES INVOLVED

The following Constitutional provisions are involved in this case: First, Fifth, Sixth, and Fourteenth Amendments of the United States Constitution. Texas Constitution: Article 1 Section 13; Article 1 Section 19. The relevant portions of these are set forth in Appendix F.

REASONS FOR GRANTING THE WRIT

This case is of great importance not only to the jurisprudence of the state of Texas but to the United States of America because no state should deprive any citizen of life, liberty, property privileges or immunities without due process of law, and because the state of Texas violated the Equal Protection Clause of the United States and Texas Constitution by irrationally treating the petitioner differently from those similarly situated and in not providing uniformity of judicial decisions and applications of law.

STATEMENT OF THE CASE

The visiting trial court judge in this matter refused to recuse himself or to allow the motion for recusal to be heard by the administrative law judge or without an oath of office on record as required by Texas law. Bishop, Peterson and Sharp, P.C. ("B.P.S."), the Intervenor below, forfeited its corporate charter and certificate and therefore had

no standing to sue or defend itself as a legal entity. "B.P.S." was allowed to proceed to trial in spite of failing to file documents required by the court. The trial court then failed to grant Petitioner's motion for summary judgment when Respondent failed to file a response, and Petitioner was entitled to judgment as a matter of law. The trial court then prevented Petitioner from offering testimony of critical witnesses, and the court further failed to enter a writ of attachment as to Petitioner's witnesses or grant a continuance of the trial, while Respondent was allowed to call undesignated witnesses. The trial court further wrongfully sealed evidence without following proper procedure, and excluded evidence that should have been included and allowed evidence of Respondent that should have been excluded. The trial court further offered legal advice to Respondent. The trial court then refused to file findings of fact and conclusions of law. The trial court refused to allow a new trial when evidence of jury coercion was established. The court failed to follow the law and apply the appropriate legal standards. The court refused to overturn the judgment when the record was altered and changed by the court reporter. A Petition for Review was filed and again the Petitioner was denied due process and equal protection in a series of events by another visiting judge. Petitioner timely filed and perfected an appeal in the Texas First Court of Appeals, and four months later the Texas Fourteenth Court of Appeals *sua sponte* opened its own case file, under a unique cause number while the case continued before the First Court of Appeals. The Fourteenth Court of Appeals then transferred the case to the Twelfth Court of Appeals while the case was still pending in the court of dominant and original jurisdiction, the First Court of Appeals. The Twelfth Court of Appeals dismissed Petitioner's appeal for failure to file a docketing statement,

when a docketing statement had already been filed in the First Court of Appeals. The Notice of Appeal was filed on December 30, 1998. The Texas First Court of Appeals opened its file, Cause No. 01-99-00004-CV on January 6, 1999. The Court of Appeals sent a letter dated 1/6/99 stating that the case had been placed in the First Court of Appeals and noted that the complete record was due on 4/1/99. Additionally, the filing fee had been requested, paid and received by the First Court of Appeals and a docketing statement filed. A Motion to Abate alerting the Twelfth Court of Appeals was filed All the rules were complied with by the Petitioner in this cause.

ARGUMENT AND AUTHORITY

The Twelfth Court of appeals erroneously dismissed this case for failure to comply with the Texas Rules of Appellate Procedure for not filing a docketing statement when a docketing statement was timely filed in the First Court of Appeals — the court of dominant jurisdiction. The court of appeals entire basis for dismissal was flawed because a docketing statement was filed. This procedural error raises issues of fundamental fairness and importance to the jurisprudence of the state and to the United States of America. The Court did not follow the law, did not afford and denied the Petitioner Due Process, departed from the essential requirements of the law, applied arbitrary, disparate and different standards, applied the law differently to the Petitioner than to others, and was so unfair and unreasonable in it's application of the law as to deny the Petitioner fundamental fairness and equal Protection under the law.

It should be noted that the Twelfth Court of Appeals did not even have jurisdiction to dismiss the case. The First Court

of Appeals is the court of original and dominant jurisdiction because the appeal was perfected in the First Court of Appeals. The *sua sponte* opening of the case by the Fourteenth Court of Appeals and the subsequent transfer to the Twelfth Court of Appeals, a co-ordinate court, when the case was previously pending in the First Court of Appeals was improper and denied the Petitioner the rights afforded to others.

The court of appeals erroneously failed to abate the case and return it to the court of original jurisdiction. This case is of importance to the Supreme Court because the law is clear that when a docketing statement is timely filed, the case may not be dismissed for failure to file a docketing statement. The intent of the docketing statement is clearly administrative and does not affect the appellate court's jurisdiction. Tex. R. App. P. 32.4. To allow a case to be dismissed where a docketing statement was filed and where the dismissing Court was provided with copies of the docketing statement and a computer print-out evidencing that the docketing statement was filed with the First Court of Appeals, the court of dominant jurisdiction, would be a denial of due process and fly directly in the face of the intent of the statute. This distorted and unfair reading departed from the essential requirements created by law and would be unfair and unreasonable in it's application. The court of appeals' opinion involves an error of law of such importance to the state's jurisprudence that it should be corrected. *See* Tex. R. App. P. 56.1(a)(5). To allow a court of appeals to assess a death penalty sanction and dismiss an appeal for failure to file a docketing statement, which is an administrative device alone, and where the docketing statement was filed in the court of dominant jurisdiction, would be a draconian measure to the litigant, a denial of due

process, and would depart from the purpose and the intent of the rule. It impermissibly distorts a fair reading and would violate the due process clause. It would therefore penalize a litigant for following the rules. In the interest of justice, it is important to the jurisprudence of this state that justice be dispensed evenly and that correct principles of law be applied in every case. Further, even though the impact of this decision may extend but a short distance beyond the parties in this case, in the interest of justice this truly egregious error must be corrected. The court of appeal's entire basis for dismissal was flawed because a docketing statement was filed. The appellate court may dismiss an appeal for want of jurisdiction, want of prosecution, or failure to comply with a requirement of the rules, a court order, or a notice from the clerk requiring a response or other action within a specified time. The appeal should not be dismissed when there was compliance with the court's order. Specifically the docketing statement was properly filed in the court of dominant jurisdiction, the First Court of Appeals.

The flaw of the court of appeals' analysis is simply this: When a court is provided copies of a docketing statement properly filed in the court of dominant jurisdiction, had both actual and constructive knowledge that the docketing statement existed and was filed, and had been notified by the First Court of Appeals by telephone and was provided a computer screen print-out evidencing that the docketing statement was filed, can the court still dismiss for failure to file a docketing statement? The answer is a resounding "No!"

The docketing statement was filed in the First Court of Appeals, the Court of original appellate jurisdiction, in accordance with the Tex. R. App. P. 32(1) on April 14, 1999. The appellant's docketing statement was due and filed with

the First Court of Appeals, the court of original jurisdiction, and the court in which the appeal should have been heard. The docketing statement was filed with the First Court of Appeals in Cause No. 01-99-00004-CV upon perfection of appeal. The filing fee of $125 was paid to the First Court of Appeals. In addition, a computerized copy of the First Court of Appeals Case Summary demonstrates that the First Court of Appeals had jurisdiction since 1/6/99. And the Clerk of the First Court of Appeals has verified that the docketing statement was indeed filed and a record of such filing is present in the Clerk's computer in the office of the First Court of Appeals. Therefore, this document should have been included in the Record. It is due to a clerical error that the docketing statement was not included in the record and therefore Petitioner should not suffer a death penalty sanction when the document was properly filed. Additionally, no other cases of such a sanction have been found in case law regarding the same.

This case was assigned to the First Court of Appeals. The First Court of Appeals never transferred it to the Fourteenth or Twelfth Court of Appeals. If it had, the Twelfth Court of Appeals should have been provided a copy of the docketing statement in the record by the previous court and did have actual as well as constructive knowledge of this docketing statement in documents which were previously provided to the Twelfth Court of Appeals. On June 21, 1999 the Court was provided and received Appellant's Motion to Abate, Motion Requesting the First Court of Appeals to Recognize its Original Jurisdiction, Re-Open Case, File and To Declare any Actions of the Fourteenth, and Twelfth Court of Appeals Void and Response to Inquiry Regarding the Attempt to Obtain the Appellate record. Therefore, not only was a docketing statement filed as required by the rules, the

Twelfth Court of Appeals had knowledge of the docketing statement provided to it in other documents, and should have been provided this document in the record by the Court of Appeals who had the document. This was also explained to the Court through a telephone conference with its chief deputy. Dismissal is not proper due to the compliance with all of the requirements, and due to a clerical error of not including it in the record. For the Twelfth Court of Appeals to dismiss the Appeal without transfer back to the First Court of appeals, the court of original and proper jurisdiction, would be a denial of Due Process to Petitioner. As well, The Court of Appeals denied the Petitioner due process and equal protection by retaining jurisdiction over a case which was transferred to it from a court that lacked original or dominant jurisdiction. The First Court of Appeals had original and dominant jurisdiction in this case. The notice of appeal was filed on December 30, 1998. The case was assigned to the First Court of Appeals and Case number 01-99-00004-CV was opened on January 6, 1999. In addition, the First Court of Appeals requested the fee of $125 and the Docketing Statement to be filed with the First Court of Appeals. The filing fee was paid to the First Court of Appeals and the docketing statement specifically provided by the First Court of Appeals was filed with that Court. This case was properly filed and the appellate process began on January 6, 1999 which reflects the fact that the First Court of Appeals is the Court of dominant/original jurisdiction and therefore the Court which has jurisdiction for all purposes in this case. The First Court of Appeals improperly disposed of this case on April 23, 1999 stating "most likely number has been duplicated." The Case should therefore be heard in the First Court of Appeals and should be properly reinstated. The First Court was the proper court and the court of dominant jurisdiction.

The case law is clear that "under the principle of dominant jurisdiction, the court in which suit is first filed acquires dominant jurisdiction to the exclusion of all other coordinate courts." *Luby's Cafeterias v. Johnson*, 979 S.W.2d 813 (Tex. App. - Houston 14th Dist. 1998, orig. proceeding). While the *Luby's* case applied to courts at the trial court level, the same rationale has been applied by the Supreme Court to cases at the appellate level. *Miles v. Ford Motor Co.*, 914 S.W.2d 135, 138 (Tex. 1995). Case law accurately states that the court of appeals to have first received documents acquired original jurisdiction over the entire controversy. This is true even if another court received other appeal documents. No interference with previously attached jurisdiction of another court of co-ordinate power is permissible under law. Appellate jurisdiction cannot be created by consent, stipulation of parties or waiver by the court. An instrument is deemed as filed with the proper clerk of the appellate court once it is received by the clerk. Jurisdiction lies in the court where the appeal is first perfected. *Miles v. Ford Motor Co.*, 914 S.W.2d 135, 138 (Tex. 1995). *Miles* also states that no interference with the previously attached jurisdiction of another court of co-ordinate power is permissible under law, citing *Morrow v. Corbin*, 122 Tex. 553, 62 S.W.2d 641 (Tex. 1933). The court of appeals, the first (in time) to have jurisdiction should retain jurisdiction over the appeal. The general common law rule is that the court in which the suit is first filed acquires dominant jurisdiction to the exclusion of all coordinate courts. This rule is grounded on the principles of comity, convenience and the need for orderly procedure in resolving disputes. *Miles v. Ford Motor Co.*, 914 S.W.2d 135, 138 (Tex. 1995). Abatement is appropriate and the first court is given priority under the dominant jurisdiction rule. Therefore, the First Court of Appeals has jurisdiction.

The legislature, by enacting Statutes, specifically Tex. Gov't Code Ann. § 22.202 states that appeals to either the First and Fourteenth Court of Appeals shall be filed in either the First or the Fourteenth Court of Appeals as provided in this section. The trial clerk shall write the numbers of the two court of appeals on identical slips of paper and place the slips in a container. When notice of appeal or appeal bond is filed, the trial court clerk shall draw a number from the container at random, and shall assign the case. This case was assigned to the First Court of Appeals. Further, the legislature has mandated in the Government Code § 22.202(f) that The First and Fourteenth Courts of Appeals shall establish a central clerk's office. This is necessary so as to avoid the inequity as described above.

The Fourteenth Court did not have proper jurisdiction and therefore had no authority to have the Supreme Court transfer the case to the Twelfth Court of Appeals. This is true even if the Supreme Court wanted to equalize the docket of the Fourteenth Court of Appeals or for any other reason because the Fourteenth Court of Appeals was not the court which had jurisdiction or dominant jurisdiction. The Fourteenth Court of Appeals did not have jurisdiction and therefore the Supreme Court could not properly transfer the case out of the Fourteenth which had no jurisdiction to the Twelfth Court of Appeals on April 19, 1999.

The First Court of Appeals, the Court of original jurisdiction, still had the case in its Court on that date. The transfer to the Twelfth Court of Appeals is void and any request, decision or order, including the order of dismissal, made by the Twelfth Court should also be void. The law is clear that any action taken by a Court without jurisdiction is void. This is not new to the Twelfth Court of Appeals and

this case should be abated as in the case of *Birmingham Fire Ins. Co. of Pa. v. American Nat'l Fire Ins. Co.*, 928 S.W.2d 226 (Tex. App. - Texarkana 1996, no writ) which involved the Twelfth Court of Appeals. In *Birmingham*, the question of jurisdiction was raised where the appeal from Gregg County could be raised in either the Sixth or the Twelfth Court of Appeals. Following the reasoning from *Miles v. Ford*, the Sixth Court of Appeals found that an appeal is perfected when the appeal bond is filed. When that happens and the appeal is perfected, the court of appeals has exclusive jurisdiction over the entire controversy and it cannot be waived or changed by agreement. Further, "a court must consider its jurisdiction and dismiss a case for which jurisdiction is lacking even if the issue is not raised by the parties." *Lavely v. Heafner*, 976 S.W.2d 896 (Tex. App. - Houston 14th Dist. 1998, no pet.). The Twelfth Court of Appeals had such knowledge and should have ordered that the case be returned to the court of original jurisdiction of the First Court of Appeals in Houston because the Fourteenth Court was without jurisdiction to transfer the case to the Twelfth Court of Appeals. "Only the Supreme Court is authorized to transfer appellate cases." *Miles v. Ford Motor Co., Inc.*, 914 S.W.2d 135, 137 (Tex. 1995). The Fourteenth Court was without authority to take, *sua sponte*, this case on appeal and therefore the transfer to the Twelfth Court of Appeals was improper and denied the Petitioner due process and equal protection under the law.

A pattern of denying the Petitioner due process and equal protection under the law manifested itself by many acts. These included the failure of the visiting judge to have the appropriate oath of office on file and to recuse himself when a Motion to Recuse was filed. In accordance with Texas Rule of Civil Procedure 18a, the judge shall either recuse himself

or request that the presiding judge of the administrative judicial district to assign a judge to hear such motion. He shall make no further orders and shall take no further action in the case, prior to a hearing on the case. In the case at hand there was no hearing on the case and therefore all orders by the judge are void. Any orders or judgments rendered by a judge who is without jurisdiction is void. *McLeod v. Harris*, 582 S.W.2d 772 (Tex. 1979) and the Government Code § 74.059 states that the district judge shall request the presiding judge to assign a judge to hear the motion to recuse. Once a party files a timely objection to the assignment, the disqualification is mandatory. Therefore, all orders and judgments made are void. Once challenged, a judge can not take further action in the case until the motion to recuse is resolved. Texas Rule of Civil Procedure 18a; *Mercer v. Driver*, 923 S.W.2d 656 (Tex. App. - Houston 1st Dist. 1995, orig. proceeding). *Winfield v. Daggett*, 846 S.W.2d 920 (Tex. App. - Houston 1st Dist. 1993 orig. proceeding) holds that the trial judge can not deny the motion without referring it to the presiding judge for hearing. Once challenged the judge can not take any further action in the case. *See Mercer*; Government Code § 74.053(c). Any judgment or order signed is void; Bishop, Peterson and Sharp, P.C. ("B.P.S.") had no standing to sue or be sued. The document from the Secretary of States Office was placed into evidence and demonstrated that Bishop, Peterson and Sharp, P.C. was not in good standing as of 5/97. The right to do business was forfeited ~~on 10~~/15/97 and therefore could not sue or defend in any action in accordance with Section 171.309 of the Texas Tax Code Ann. and the charter was forfeited on 2/18/98. Section 171.252 of the Statute is clear stating "If the corporate privileges (right to do business) are forfeited the corporation shall be denied the right to sue or defend in any court in the state. *Humble Oil and Refining Co. v.*

Blankenburg, 149 Tex. 498, 235 S.W.2d 891, reiterates the same. Therefore, Bishop, Peterson and Sharp, P.C. could not sue or defend in this action pursuant to the above mentioned document; "B.P.S." failed to file a pre-trial order as required by the Court and was allowed to proceed. The pre-trial order must recite the actions taken and the rulings made and controls the procedure for the case. The order prevails. The parties must comply with the pretrial order. *British Am. Ins. Co. v. Howarton*, 877 S.W.2d 347 (Tex. App. - Houston 1st Dist. 1994); *Transamerican Nat. Gas Corp. v. Powell*, 811 S.W.2d 913 (Tex. 1991); *FDIC v. Finley* 832 S.W.2d 158 (Tex. App. - Houston 1st Dist. 1992, writ denied). The trial court can not disregard its own pretrial order *Mercedes Benz Credit Corp. v. Rhyne*, 925 S.W.2d 664 (Tex. 1996). The parties are allowed to rely on the pre-trial order. Bishop, Peterson and Sharp failed to file a pre-trial order and therefore should not have been allowed to bring forth any witnesses or evidence. Petitioner filed a pre-trial order and therefore the weight of the evidence was in her favor. For the visiting judge to ignore the pre-trial order and allow Bishop, Peterson and Sharp, P.C. to present evidence and witnesses denied Petitioner due process; The Court should have heard and granted the Summary Judgment. Bishop, Peterson and Sharp, P.C. failed to file a response. Therefore, as a matter of law, the summary judgment should have been granted in accordance with TRCP 166a as it is in other cases. The Trial Court denied due process when it failed to continue the case or require that properly subpoenaed witnesses were attached. Thus, a subpoena in accordance with TRCP 176, 199.3 and 205 and commands a person to appear and give testimony TRCP 176.2. A trial subpoena was provided to critical witnesses who were necessary to testify in the case. The visiting judge should not have allowed Bishop, Peterson and Sharp to call undesignated witnesses

and interject them in the Petitioners presentation of the case when a timely objection was made. If the parties and their testimony was concealed it should be excluded. It is clear that all of the witnesses Bishop called were undisclosed and should not have been allowed. To allow this testimony would be tantamount to a trial by ambush. Upon objection, the court must exclude a witness if the witness was not listed so as to avoid unfairness or surprise TRCP 193.6(a); The trial court refused to permit the petitioner to make a Bill of Exceptions. *State v. Biggers*, 360 S.W.2d 516 (Tex. 1962); *In re Marriage of Goodwin*, 562 S.W.2d 532 (Tex. App. - Texarkana 1978, no writ) An appellate court can not reach the question of whether evidence was erroneously excluded unless the excluded evidence is included in the record for its review. *Hartford Ins. Co. v. Jiminez*, 814 S.W.2d 551 (Tex. App. - Houston 14th Dist. 1995). Therefore, the visiting judge denied the appellant the right to make a bill of exceptions; The Court without following the rules sealed the record. The Courts record is presumed to be open to the general public and can be sealed only upon satisfying all the requirements set out in TRCP 76(a). *Burlington N. RR. v. Southwestern Elec. Power Co.*, 905 S.W.2d 683 (Tex. App. - Texarkana 1995, no writ) No court order or opinion issued in a case may be sealed under any circumstance. TRCP 76(a)(1). All documents that relate to the lawsuit are considered court records and are presumed open to the public for inspection. The entire record of trial proceedings is public and can not be sealed. Furthermore, there was no written motion to seal as required under TRCP 76(a)(3); The visiting judge advised Mr. Bishop to seal the file. The visiting judge continually afforded Bishop legal advice. Acting as if the judge was an advisor to an attorney would demonstrate bias. A judge has bias or prejudice in favor of or against a party in the case. Government Code § 62.105(4); The Court

did not allow designated witnesses and specifically an expert to testify; The trial court ignored the Request for findings of fact and conclusions of law which were timely and properly filed. When properly requested the trial court has a mandatory duty to file findings of fact. *In Re Combs*, 958 S.W.2d 848 (Tex. App. - Amarillo 1997 n.p.h.); Evidence of jury coercion and alteration of the record existed in the original case and the reporter did not provide the record in the later. Jury misconduct occurred in accordance with evidence presented in the form of summary judgment evidence and at the Bill of Review trial. The affidavit of Ruby Jackson indicated jury misconduct and overall misconduct at trial. The misconduct was material, based on the entire record and the misconduct resulted in harm. *Branham v. Brown*, 925 S.W.2d 365 (Tex. App. - Houston 1st Dist. 1996, no writ). The affidavit demonstrating jury coercion demonstrated injury and that the misconduct caused jurors to vote differently on a question(s) vital to the judgment; The judgment did not conform to the pleadings or evidence. *TRCP 301 Soto v. Sea Road Intl, Inc.*, 942 S.W.2d 75 (Tex. App. - Corpus Christi 1997, writ denied.). The visiting judge did not have jurisdiction over the case also making the judgment void. The trial court did not have jurisdiction therefore making the judgment void. If the trial judge is not qualified by law to sit in that court, i.e. as in the case where the initial judge did not have an oath of office on file with the secretary of state the trial court judge can not render a valid judgment. *Lone Star Industries Inc. v. Ater*, 845 S.W.2d 334 (Tex. App. - El Paso 1992, original proceeding). Arbitrary and disparate treatment was applied to the Petitioner. The courts failed to apply the appropriate legal standards, failed to provide uniformity of judicial decisions and application of the law, irregularly applied rules to deny the Petitioner the right of fundamental fairness, was unfair and unreasonable in the

application of the law, irrationally treated the Petitioner differently from those similarly situated and denied the Petitioner Due Process and Equal Protection under the law.

CONCLUSION

It is for the abovementioned reasons that the Petitioner respectfully requests that this Honorable Court grant this writ of certiorari.

Respectfully submitted,

SUSAN B. MEEK, ESQ.
Petitioner, Pro Se
3000 Weslayan
Suite 355
Houston, Texas 77027
(713) 877-8112

APPENDIX

APPENDIX A — PER CURIAM OPINION OF THE COURT OF APPEALS FOR THE TWELFTH COURT OF APPEALS DISTRICT, TYLER, TEXAS DATED JANUARY 31, 2000

NO. 12-99-00092-CV

IN THE COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT
TYLER, TEXAS

SUSAN B. MEEK, M.D., J.D.,

APPELLANT

V.

GEORGE M. BISHOP AND BISHOP, PETERSON AND SHARP,

APPELLEES

APPEAL FROM THE 55TH JUDICIAL DISTRICT COURT OF HARRIS COUNTY, TEXAS

PER CURIAM OPINION DENYING REHEARING

On November 23, 1999, this Court dismissed the instant appeal on grounds that Appellant Susan B. Meek, M.D., J.D. ("Meek") had failed to comply with the Texas Rules of Appellate Procedure by not filing a docketing statement with this court after having been notified to do so. On December 6, 1999, Meek filed a motion for rehearing asserting that she had indeed complied with the docketing statement

requirement. Although we will deny Meek's motion for rehearing, before doing so, we will briefly address the contentions contained in that motion as related to the record before us.

As noted by this Court in its original opinion, this appeal was transferred to our court from the Fourteenth Court of Appeals by supreme court order on April 20, 1999. Prior to the appeal's transfer, the Fourteenth Court had notified Meek on April 5, 1999, that her docketing statement was past due. Despite the past due notice, Meek neither filed the docketing statement with the Fourteenth Court nor this Court. Thereafter, the cause proceeded on transfer and on October 19, 1999, this Court sent Meek a second notice informing her that her docketing statement was past due and that failure to file it within ten days would result in dismissal of her appeal. The deadline for responding to the court's dismissal notice expired on October 29, 1999. The court, however, waited 25 additional days for compliance with the docketing statement requirement before dismissing Meek's appeal.

In her motion for rehearing, Meek asserts that her appeal had originally been filed with the First Court of Appeals, and that she had filed a docketing statement with that court. As proof, she attached an unfile-marked copy of a docketing statement captioned to the First Court of Appeals. Meek further claims that this court should have known that she had complied with the docketing statement requirement because she filed a "*Motion to abate, Motion Requesting the First Court Of Appeals recognize its Original Jurisdiction, Re-Open Case File and To Declare Any Actions of the Fourteenth, and Twelfth Court Of Appeals Void and Response to Inquiry Regarding The Attempt to Obtain*

The Appellate Record" with the First Court of Appeals, and attached to that motion was a copy of her unfile-marked docketing statement. She argues that since a copy of these motions was forwarded to this Court, it should have known that she had complied with the docketing statement requirement.

While Meek did furnish this court with a copy of her motions filed in the First Court of Appeals, it should be noted that this Court was neither a party to those proceedings nor were the motions part of the appellate record in the instant appeal. Instead, our records reflect that the clerk's office returned those motions to Meek on June 21, 1999, since they had been forwarded to this Court without explanation and were directed to the First Court of Appeals rather than this Court.

Additionally, Meek asserts that she explained to this Court's Chief Deputy Clerk that she had already filed a docketing statement with the First Court of Appeals, and thus should have been excused from filing a docketing statement here. While Meek did telephonically inform this Court's Chief Deputy Clerk that she had filed a docketing statement in the First Court of Appeals, it should be noted that the Chief Deputy Clerk responded by informing Meek that if she would forward a copy of that docketing statement to this court in response to its dismissal notice, the court would accept as sufficient the docketing statement she had previously filed with the First Court of Appeals. Nevertheless, although allowed twenty-five additional days to forward the docketing statement, Meek never presented a copy of it for filing nor did she otherwise respond to this Court's dismissal notice.

Finally, we note that on December 17, 1999, Appellees filed a motion to dismiss the instant appeal on grounds that Meek has failed to comply with TEX. R. APP. P. 9.5. Subsection (a) of Rule 9.5 requires that at or before the time a document is filed with the appellate court, "the filing party must serve a copy on all parties to the appeal or review." Although Meek's documents contain a certificate of service as required by TEX. R. APP. P. 9.5(e), Appellees' motion maintains that they have not been served with "at least six motions for extension of time to file her [Meek's] brief, as well as various motions to abate, petitions for writ of mandamus and writ of prohibition, and various other filings *of which she [Appellant] has never served one on Appellees!*" Moreover, Appellees assert that this Court notified Meek that Bishop had not been served with copies of her documents.

A review of our records indeed reflects that on several occasions, Appellee Bishop ("Bishop") notified this Court that Meek had failed to serve him with documents she had filed here. Each of these letters further reflects that Meek had been notified of the lack of service upon Bishop by copy of the letter directed to Meek. The record also reflects that on June 23, 1999, Bishop notified this Court and Meek that he had changed his address. On August 18, 1999, in an attempt to obtain compliance with Rule 9.5(a), this Court informed Meek that it had received correspondence from Bishop stating he had not been served with a copy of all documents presented to this Court for review, and it requested that Meek insure that she had properly served Bishop with all documents filed.

Thereafter, on August 30, 1999, at Bishop's request, this Court mailed to Bishop copies of the motions for extension

of time to file brief which Meek had previously filed with this Court. It also reminded Meek of Bishop's current address because it differed from the address appearing on Meek's certificates of service.

Thereafter, on October 15, 1999, Appellee Bishop notified this Court that he had not been served with a copy of Meek's third motion for extension of time to file her brief. On October 20, 1999, the court thus forwarded a copy of that motion to Bishop, and copied Meek with its cover letter. Following this date, the court received three additional notices from Bishop that Meek had not served him with documents filed in this Court. Finally, on December 20, 1999, upon this Court's request, Bishop filed a verified statement swearing that his December 8, 1999 letter in which he represented that he had "not received a copy of anything Appellant has filed with this Court . . ." was true and correct. As of January 5, 2000, Meek has neither responded to the motion to dismiss nor otherwise disputed Bishop's verified statement. Because this appeal has already been dismissed for Meek's failure to comply with the Texas Rules of Appellate Procedure, we need not rule on Bishop's motion to dismiss the appeal unless we grant Meek's rehearing and reinstate the appeal. Having reviewed Meek's motion for rehearing and the file in this case, we however conclude that the motion for rehearing is without merit. Accordingly, the motion for rehearing is denied.

Opinion delivered January 31, 2000.
Panel consisted of Ramey, Jr., C.J., Hadden, J., and Worthen, J.

APPENDIX B — PER CURIAM OPINION OF THE COURT OF APPEALS FOR THE TWELFTH COURT OF APPEALS DISTRICT, TYLER, TEXAS DATED NOVEMBER 23, 1999

NO. 12-99-00092-CV

IN THE COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT
TYLER, TEXAS

SUSAN B. MEEK, M.D., J.D.,

APPELLANT

V.

GEORGE M. BISHOP AND BISHOP, PETERSON AND SHARP, P.C.,

APPELLEES

APPEAL FROM THE 55TH JUDICIAL DISTRICT COURT OF HARRIS COUNTY, TEXAS

PER CURIAM

This appeal is being dismissed for failure to comply with the Texas Rules of Appellate Procedure. TEX. R. APP. P. 42.3.[1]

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1. TEX. R. APP. P. 42.3 provides:

Involuntary Dismissal in Civil Cases. Under the following circumstances, on any party's motion — or

(Cont'd)

Appendix B

Pursuant to TEX. R. APP. P. 32.1, Appellant's docketing statement was due to have been filed at the time the appeal was perfected, *i.e.* December 30, 1998. On April 5, 1999, Appellant was notified by the Fourteenth Court of Appeals that the docketing statement was *past due* and Appellant was given until April 15, 1999 to file it. However, on April 20, 1999, before the Fourteenth Court could follow up on Appellant's failure to file a docketing statement, the appeal was transferred to this Court by Order of the Texas Supreme Court dated April 14, 1999. Thereafter, on October 19, 1999, when this court became aware that Appellant had not filed a docketing statement, it sent Appellant a second notice that her docketing statement was past due, and it gave Appellant an additional ten days to comply with TEX. R. APP. P. 32.1. The notice further provided that pursuant to TEX. R. APP. P. 44.3, failure to comply with this second notice would result in the appeal being presented for dismissal in accordance

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(Cont'd)

> its own initiative after giving ten days' notice to all parties — the appellate court may dismiss the appeal or affirm the appealed judgment or order. Dismissal or affirmance may occur if the appeal is subject to dismissal:
>
> (a) for want of jurisdiction;
>
> (b) for want of prosecution; or
>
> (c) because the appellant has failed to comply with a requirement of these rules, a court order, or a notice from the clerk requiring a response or other action within a specified time.

with TEX. R. APP. P. 42.3. The time for filing the docketing statement under this second notice expired on October 29, 1999. As of November 8, 1999, Appellant had not filed the docketing statement as required by TEX. R. APP. P. 32.1 and the court's notices.

Appellant having failed, after notice, to comply with the TEX. R. APP. P. 32.1, the appeal is dismissed pursuant to TEX. R. APP. P. 42.3(c).

Opinion delivered November 23, 1999.
Panel consisted of Ramey, Jr., C.J., Hadden, J., and Worthen, J.

APPENDIX C — FINAL JUDGMENT OF THE DISTRICT COURT OF HARRIS COUNTY, TEXAS, 55TH DISTRICT COURT DATED DECEMBER 2, 1998

IN THE DISTRICT COURT OF
HARRIS COUNTY, TEXAS
55TH DISTRICT COURT

No. 96-52997

SUSAN B. MEEK, M.D., J.D.

V.

GEORGE M. BISHOP AND BISHOP
PETERSON & SHARP, P.C.

FINAL JUDGMENT

Be it remembered that on the 26th day of October, 1998, came on to be heard the above-styled and numbered cause and neither party having timely requested a jury, the case was assigned to trial before the Honorable Pete Andrews, a Senior Judge from Jones County. The Plaintiff/Petitioner Susan B. Meek, M.D., J.D. ("Meek") objected to Judge Andrews, which objection was sustained. This case was reassigned to the Honorable Joe Dibrell of Travis County, a Senior Judge. After hearing Plaintiff/Petitioner's objection to Judge Dibrell sitting in the case, the objection was overruled. The case proceeded to trial without a jury on October 27, 1998. The case continued in trial on October 28, 29, and 30, when it was adjourned until November 16, 1998. The case was tried again November 16, 17, and 18, 1998. After the conclusion of all of the evidence on

Appendix C

November 18, 1998, the Court was of the opinion that Plaintiff/Petitioner had failed to meet her burden of proof to show that the previous judgment of the 55th District Court in favor of Bishop Peterson & Sharp, P.C. and against Susan B. Meek, M.D., J.D., in Cause No. 91-24358, should have been set aside by this Equitable Bill of Review. The Court further heard the Defendants/Respondents' Request for Sanctions pursuant to Rule 13 of the Texas Rules of Civil Procedure and Plaintiff/Petitioner's Motion for Sanctions and denied both requests for sanctions.

It is therefore ORDERED, ADJUDGED and DECREED that the Plaintiff/Petitioner take nothing on her action for Equitable Bill of Review and that the previous judgment in Cause No. 91-24358 is upheld as a valid and subsisting judgment.

It is further ORDERED that all exhibits offered into evidence on the various bills of exception of Plaintiff/ Petitioner Susan B. Meek are sealed and the file containing the bills of exception is sealed until further order of this Court. Such documents are immaterial and irrelevant to the issues involved in an equitable bill of review and contain personal and financial information of Respondent which Plaintiff/Petitioner Susan B. Meek has declined to testify on or state where such documents were obtained.

It is further ORDERED that Plaintiff/Petitioner Meek pay all costs of court for which let execution issue if not timely paid.

Appendix C

SIGNED and rendered on this 2nd day of December 1998.

s/ Joe Dibrell
Honorable Joe Dibrell
Presiding Judge

Approved as to form:

GEORGE M. BISHOP & ASSOCIATES

s/ George M. Bishop
George M. Bishop
State Bar No. 02353000
3000 Smith
Houston, Texas 77006
Telephone: (713) 521-9797
Telecopier: (713) 521-3125

APPENDIX D — LETTER OF THE SUPREME COURT OF TEXAS DENYING PETITION FOR REVIEW DATED SEPTEMBER 14, 2000

THE SUPREME COURT OF TEXAS
POST OFFICE BOX 12248
AUSTIN, TEXAS 78711
(512) 463-1312

September 14, 2000

Ms. Susan Bieber Meek
3000 Weslayan
Houston, TX 77027

Mr. Newton B. Schwartz, Sr.
1911 Southwest Freeway
Houston, TX 77098

RE: Case Number 00-0500
Court of Appeals Number: 12-99-00092-CV
Trial Court Number: 96-52997

Style: SUSAN B. MEEK, M.D., J.D.
v.
GEORGE M. BISHOP, and BISHOP, PETERSON & SHARP

Dear Counsel:

Today, the Supreme Court of Texas denied the petition for review in the above styled case.

Appendix D

Sincerely,

John T. Adams, Clerk

by s/ Gena Pelham
Gena Pelham, Deputy

cc: Ms. Cathy S. Lusk, Clerk
Mr. Charles Bacarisse
Mr. George M. Bishop

APPENDIX E — LETTER OF THE SUPREME COURT OF TEXAS DENYING MOTION FOR REHEARING DATED NOVEMBER 2, 2000

THE SUPREME COURT OF TEXAS
POST OFFICE BOX 12248
AUSTIN, TEXAS 78711
(512) 463-1312

November 02, 2000

Ms. Susan Bieber Meek
3000 Weslayan
Houston, TX 77027

Mr. Newton B. Schwartz, Sr.
1911 Southwest Freeway
Houston, TX 77098

RE: Case Number 00-0500
Court of Appeals Number: 12-99-00092-CV
Trial Court Number: 96-52997

Style: SUSAN B. MEEK, M.D., J.D.
v.
GEORGE M. BISHOP, and BISHOP, PETERSON & SHARP

Dear Counsel:

Today, the Supreme Court of Texas denied the motion for rehearing of the above styled petition for review.

Appendix E

Sincerely,

John T. Adams, Clerk

by s/ Patricia A. Cook
Patricia A. Cook
Chief Deputy Clerk

cc: Ms. Cathy S. Lusk, Clerk
Mr. Charles Bacarisse
Mr. George M. Bishop

APPENDIX F — CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const., Amend. I

Freedom of Religion, Speech and Press; Peaceful Assemblage; Petition of Grievances

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const., Amend. V

Grand Jury Indictment for Capital Crimes; Double Jeopardy; Self-Incrimination; Due Process of Law; Just Compensation for Property

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Appendix F

U.S. Const., Amend. VI

Jury trials for crimes, and procedural rights

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

U.S. Const., Amend. XIV

Citizenship; Privileges and Immunities; Due Process; Equal Protection; Appointment of Representation; Disqualification of Officers; Public Debt; Enforcement

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State,

excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or

emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Texas Const., Art. 1, § 13

§ 13. Excessive bail or fines; cruel and unusual punishment; remedy by due course of law

Sec. 13. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person for an inquiry done him, in his lands, goods, person or reputation, shall have remedy by due course of law.

* * *

Texas Const., Art. 1, § 19

§ 19. Deprivation of life, liberty, etc.; due course of law

Sec. 19. No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

* * * *

APPENDIX G — DOCKETING STATEMENT FILED IN THE FIRST COURT OF APPEALS DATE APPEAL FILED JANUARY 6, 1999 DOCKETING STATEMENT FILED APRIL 15, 1999

Events/Calendars/ Inform
De .on 3
Date Printed: 03/01/2000 - Time: 1 3:24

*** 1st Court of Appeals Events Summary ***

Case Number: 01-99-00004-CV — Date Appeal Filed: 01/0 1999

Style: Meek, Susan O. M.D, J.D.
v. George M. Bishop and Bishop, Patterson and Sharp

Event Date	Post Proc	Event	Descr	Disp	Secs	Oral	En Banc	J1	J2	J3	Op	Rdx	Vol	Page
12/02/1998		JUG SIGNED												
12/30/1998		MTN NEW TRL												
12/30/1998		NOA FILED												
01/06/1999		NOA RECEIVED CV												
04/01/1999		RECORD DUE												
04/15/1999		$125 FEE PD	ANT											
		*** Remarks: CK #2014 / SUSAN MEEK / NORTHERN TRUST BANK												
04/15/1999		D/S FILED	ANT											
		*** Remarks: FILED BY SUSAN M. MEEK												
04/23/1999		ORDER ENTERD	VOIDED											
		*** Remarks: ASSIGNED TO 14TH COA; SEE MEMO												
06/17/1999		MOTION FILED APP												
		*** Remarks: TO ABATE, REQ. 1ST COA TO RECOGNIZE ITS ORIGINAL JURISDICTION & RE-OPEN CASE FIL												
07/06/1999	SUP CT	MOT TO FILE												
		*** Remarks: 99-0659, PET FOR WRIT OF MANDAMUS WAS FILED												
07/08/1999	SUP CT	MOT TO FILE												
		*** Remarks: 99-0659--LV MANDAMUS												
07/14/1999		MOTION DISP ANT	OVRULE											
		*** Remarks: MTN TO ABATE, MTN REQ. 1ST COA RECOGNIZE ITS ORIGINAL JURISDICTION, RE OPEN.....												
08/12/1999	SUP CT	MOT TO FILE REL	DENIED											
		*** Remarks: 99-0659, WRIT OF MANDAMUS WAS DENIED												

Calendars Associated With Case: 01-99-00004-CV

BEST AVAILABLE COPY